

Jagdish Prasad Ajmera Vs. Sushil Kumar and Another

Date of Judgment :: **21st May, 2007**

Hon'ble Dr. Vineet Kothari, J.

Mr.J.K. Singhvi for the petitioner.
Mr.B.L. Mandhana for the respondents.

This revision petition is directed against the order dated 16.1.2002 whereby the Executing Court vacated the stay order dated 15.1.2002 granted in favour of the objector under Order 21 Rule 97 of C.P.C.

The objector, Jagdish Prasad Ajmera, is the husband of Smt. Kalpna Devi, the tenant. According to the petitioner, he and Smt. Kalpna Devi got married on 6.5.1981 and took the suit premises situated at 99, Sadar Bazar, Nasirabad on rent on 1.7.1983. However, there were disputes between two and wife, Smt. Kalpna Devi left the matrimonial home on 8.10.1998 and started living separately at different address. Thereafter, criminal proceedings between the husband and the wife were

also started inasmuch as wife Smt. Kalpna Devi filed an FIR under Sections 323 and 341 I.P.C. and also a complaint under Section 498A I.P.C. On 22.11.2000. According to the petitioner, the present suit for eviction was filed against the wife, Smt. Kalpna Devi, on 28.8.2001 and the summons of the same are alleged to have been served on Smt. Kalpna Devi at the given address of the suit premises, 99, Sadar Bazar, Nasirabad on 3.9.2001, though she was living at other place and one Shri S.K. Mangal, Advocate filed power on her behalf and prayed for time to file written statement. However, only after a period of 15 days, on 18.9.2001, the said Shri S.K. Mangal, Advocate pleaded no instructions on behalf of Smt. Kalpna Devi, the defendant and ex-parte proceedings were drawn against her, which ultimately resulted into an ex-parte decree on 6.10.2001. The case of the petitioner is further that he filed an application before the trial court on 3.10.2001 seeking leave of the trial court to be impleaded in the suit on account of wife living separately and he was the tenant and wife alone was not the tenant, therefore, he intended to be impleaded by filing a separate application under Order 1 Rule 10 C.P.C. The trial court, however, rejected the said application and decreed the suit on 6.10.2001.

Mr. J.K. Singhi, learned counsel appearing on behalf of the petitioners, submitted that the objections filed under Order 21 Rule 97 before the trial court were justified as the husband was tenant of predecessor in title of namely M/s.Ghisa Lal Jatan Lal and in the register maintained by Chanvi Parisad, Nasirabad, he was shown as the tenant of the suit premises. He further submitted that the executing court erred in not deciding his objection and by the impugned order and hastened to vacate the stay order granted earlier by it and keeping the execution application pending, which would cause serious prejudice and irreparable loss to the objector, the present petitioner.

Mr. B.L. Mandhana, on the other hand, objected to the submissions made by learned counsel for the petitioner and he urged that the revision petition itself was not maintainable after amendment of Section 115 C.P.C. and in view of the judgment of the Hon'ble Supreme Court in Shivshakti's case. He submitted that the objections filed by the petitioner were wholly unsustainable and, therefore, there was no error in the impugned order and the revision petition itself deserved to be

dismissed.

From the record, it appears that during the pendency of this revision petition, the petitioner, Jagdish Prasad Ajmera, himself has expired on 27.9.2005 and, therefore, an application under Order 22 Rule 3 C.P.C. has been filed on 18.1.2006 seeking to bring on record son of the petitioner, Deepak Kumar Ajmera, on record. The application under Order 22 Rule 3 C.P.C. is allowed and the amended cause title be taken on record.

Mr. J.K. Singhi, learned counsel for the petitioner also submitted that in case, this Court comes to the conclusion that the revision petition is not maintainable, the same may be treated as a writ petition because in view of the impugned order passed by the executing court, a serious miscarriage of justice would result as the trial court has not allowed the evidence in relation to tenancy in favour of the petitioner, Jagdish Prasad Ajmera, to be brought on record. He further submitted that for meeting the ends of justice, this Court may also direct the executing court to decide the execution application itself including the objections of the petitioner under Order 21 Rule 97

C.P.C. expeditiously and till then, the interim order granted by this Court in the present revision petition on 25.1.2002, which has continued so far may be allowed to continue.

Mr. Mandhana further submitted that the petitioner had also filed an appeal against the impugned eviction decree and having failed in first appeal also preferred a second appeal before this Court. Mr. J.K. Singhi submitted that the said second appeal was also dismissed by this Court on 13.4.2007, however, with a liberty to raise the objections in the executing proceeding as prayed by learned counsel for the appellant and accordingly, he is pressing his objections before this Court in this revision petition.

Having considered the rival submissions and legal position of the case, this Court is of the opinion that though strictly speaking this revision petition would not be maintainable as it is admittedly filed against an interlocutory order rejecting the said order, however, it appears that it has the effect of a trial order as the objector would be liable to be evicted from the suit premises and the trial court appears to have hastened to vacate

the stay order granted in favour of the objector-petitioner by the impugned order without properly deciding his objections after allowing him reasonable opportunity to lead the evidence that he was the original tenant of the predecessor in title of the suit property, therefore, in the facts and circumstances of the case, it appears just and proper that the impugned order dated 16.1.2002 be set aside and the trial court be directed to decide the execution application itself expeditiously within a period of three months from the date of receipt of a certified copy of this order inter-alia deciding the objections of the petitioner. Until then, the interim order granted by this Court on 25.1.2002 shall continue.

The revision petition is disposed of accordingly. No order as to costs.

[Dr. Vineet Kothari],J.

**S.S.
Jr.P.A.**